(1)

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

THOMAS M. EELLS,

Petitioner

v.

WILLIAM KWOK, et al

Respondents

On Petition for Writ Of Certiorari
To The State of California
Los Angeles County Superior Court
(Case Number BC195306)
(Second Appellate District, Case No. B139862)
(California Supreme Court, Case No. S 096351)

PETITION FOR WRIT OF CERTIORARI

THOMAS M. EELLS,
In Pro Se
10750 Cushdon Avenue
Los Angeles, CA 90064
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---

21 pp

QUESTION PRESENTED FOR REVIEW

The question presented for review is that a court of the State of California has decided an important federal question in a way that conflicts with relevant decisions of this Court and is in conflict with the State's own laws and Constitution.

Can a state court set two standards of appellate review for two different classes of citizens by granting due process and equal protection of the laws of that State and its Constitution when the first class of citizens of that State is represented in a civil action by legal counsel; and by denying due process and equal protection of the laws of that State and its Constitution for a second class of citizens of that State for the sole and exclusive reason that such second class of citizens is represented in a civil action *pro se, in propria persona*?

Is such a denial of due process and equal protection of the laws and Constitution of a State to a *pro se, in propria persona* layman litigant in a civil action for the sole and exclusive reason that the litigant has not employed and paid for legal counsel, a violation of Section 1 of the 14th Amendment of the Constitution of the United States

LIST OF PARTIES TO THE PROCEEDING

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In pro se
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Los Angeles, CA 90064
Telephone (310) 470-2660

William Kwok, et al. By co-counsels:
Wayne Hunkins, Esq.
Bollington, Roberts, Hunkins & McDonald
3780 Kilroy Airport Way
Long Beach, CA 90806

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15760 Ventura Blvd. 18th Floor
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In The
SUPRME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

The State of California, Los Angeles County Superior Court (File No. BC195306) filed judgement February 24, 2000 (herein as Appendix A), and petitioner appealed to the California Second District Court of Appeal (File No. B139862). That court of appeal is the putative highest court to review this matter in an unpublished opinion (herein as Appendix B). However, no review was made on the merits by that or any other court. A Petition for Rehearing was denied and a Petition for Review to the California Supreme Court (File No., S 096351), where the federal question was raised (at p. 8), but it was denied May 16, 2001 (herein as Appendix C). A Remittitur was issued June 15, 2001 (herein as Appendix D) by the appellate court, and the present record is now held by the Clerk of the State of California, County of Los Angeles Superior Court, 111 North Hill Street, Los Angeles, CA 90012. For a fair hearing on this petition, a review and consideration of the adequacy of the entire appellate record is required. The appendices hereto are true copies of the originals thereof.

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision involved in this matter is §1 of the 14th Amendment to the Constitution of the United States, guaranteeing that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

I. INTRODUCTION

Petitioner is the plaintiff in a civil action filed in the State of California, Los Angeles County Superior Court, resulting from an auto accident, when after completing a left turn, petitioner's car was sideswiped by respondents' car. The trial was held on December 28, and 29, 1999, between the Christmas and New Year's holidays and the trial judge forced a "rush to judgement." Petitioner believed that decisions of law by the trial judge (where exceptions were taken by petitioner during the trial) and the subsequent judgement were improper and appealed to the California Second District Court of Appeal, requesting a new trial.

The appellate court (Appendix B) refused to review the merits for the sole and exclusive reason that the record on appeal did not include a reporter's transcript.

Only two subjects were considered in this one page opinion: first, the appellant was *"in propria persona,"* and second *"He has not provided us (the court) with a reporter's transcript of any of these proceedings."* Then in explanation:

> "The Court of Appeal has held: 'A judgement or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent. ...[Citation]' ... In the absence of a complete record in the case, we will not presume error in any respects." (emphasis added) (Appendix B)

These presumptions are in error for two reasons. First, appellate records of necessity are not complete. The proper standard criterion should have been, is the record adequate to examine, consider and determine the issues.

The second reason the opinion is wrong, is that there is a record in this matter and it is not silent. There was a 168 page Clerk's Transcript, including all relevant pleadings at trial and post trial motions and all minutes of the trial court. (Appendix E.) Lodged with the appellate court in its record were exhibits admitted at trial, as dispostive facts, in lieu of a reporter's transcript. There were three briefs filed and oral argument, where there was close and detailed questioning of both parties by the justices. Contrary to the appellate opinion, this appellate record was adequate for the court to fairly consider and determine the issues on the merits.

This appellate opinion is in conflict with the United States' and the California Constitutions and other published opinions of the same court. The true reason for the refusal to review the trial court's decisions on appeal, was a denial of due process and equal protection of the laws because the petitioner is a layman litigant, *pro se*, *in propria persona*.

II. PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

The appellate opinion is in conflict with Article VI, §14 of the California Constitution, requiring that appellate court opinions *"shall be in writing with reasons stated."* This provision *"is designed to insure that the reviewing court gives careful thought and consideration to the case and that the statement of reasons indicate that appellant's contentions have been reviewed ..."* People v. Rojas (1981) 118 Cal.App.3d 278, 288. The right for petition to the California Supreme Court, *"... renders it necessary that the opinions of the District Court of Appeal state the case fully and fairly as to the controlling facts and pertinent rules of law."* Victer v. Pan Pac. Sales Corp. (1952) 108 Cal.App.2d 601, 603.

There are no California statutes nor California court rules requiring a reporter's transcript as part of the appellate

record before a trial court's rulings can be reviewed on appeal. Many California published opinions and decisions are found where the record did not include a reporter's transcript. Cited to the California Supreme Court, were the constitutional issue herein was raised, and also to this same appellate court, is a case published by this same appellate court where no reporter's transcript was part of the appellate record. Yet, in that case the same appellate court reviewed, considered and determined the issues on the merits.

In the case of Lankster v. Alpha Beta Co. (1993) 15 Cal.App.4th 678, at page 683 this same appellate court, with no reporter's transcript, stated in its published opinion:

> "The record before us is insufficient to rebut the presumptions of prejudice, not because the evidence was weak but because no evidence has been presented. The record consists of copies of the verdict, the minute order and judgement reflecting the verdict, the papers filed in support of and in opposition to the motion for a new trial (the juror declarations and memoranda of points and authorities), the minute order reflecting the denial of the new trial, Desiree's notice of appeal and her designation of the record on appeal. There is no reporter's transcript of the evidence presented at trial. Nothing to indicate the length of the trial - in short, nothing to show whether there was prejudicial error." (emphasis added)

In spite of the lack of a reporter's transcript as part of the appellate record, the same appellate court that refused to review this case, examined, considered and decided the Lankster case on the merits on the substantially limited and minimal record presented in that case.

In this case, petitioner lodged with the appellate court, as part of the appellate record, dispositive factual exhibits admitted at trial in lieu of a reporter's transcript. Prejudicially, these exhibits were returned to petitioner unexamined, unopened, still sealed, as lodged with the appellate court by the petitioner. (See Appendix F, attached)

In the Lankster case, without a reporter's transcript, this same appellate court published an opinion based on that meager appellate record, and all parties were represented by counsel.

In the present case, without a reporter's transcript, but with the appellate record presented substantially more in detail than the published Lankster case, the same appellate court refused to consider the merits of the appeal. In the present case, the appellant is *pro se, in propria persona*.

In a further published opinion by the same California Second District Court of Appeal, Hill v. City of Long Beach (1995) 33 Cal.App.4th 1684, at page 1687, it is stated:

> "[W]e independently review all questions of law, and are not bound by the trial court's ruling in that regard. (Stratton v. First Nat. Life Ins. Co. (1989) 210 Cal.App.3d 1071, 1083 258 Cal.Rptr. 721 ['We also conduct independent review of the trial court's determination of questions of law. We are not bound by the trial court's stated reasons, if any, supporting its ruling: we review the ruling, not its rationale.']" (emphasis added)

In the present case, the defendants/respondents presented no evidence at trial; their only presentation was an opening and closing statement. (Appendix E, pages 2 and 5). The only questions on appeal were the application of California law to the undisputed facts. The opinion filed in this case, refusing to review on the merits any issue of law, is

in conflict with the vaunted published opinion of reviewing all issues of law by the same appellate court in the Hill case.

The appellate opinion in the present matter is stark evidentiary proof that in the California Second District Court of Appeal, there is a prejudicial discriminatory standard of review, depending on whether the litigants are represented by counsel or *pro se, in propria persona.* This double standard of review is one standard of review for cases on their merits where all parties are represented by counsel and a second standard where the appellant is a layman litigant. The second standard is a refusal to review a case on its merits, if the appellant is *pro se, in propria persona* and this is a transparent denial of due process and equal protection of the laws by the California Second District Court of Appeal.

III. IF GRANTED EQUAL PROTECTION OF THE LAWS, A NEW TRIAL WOULD BE GRANTED.

The record will show at trial, the respondents rested without putting on a case. Their only presentations were an opening and closing statements, which, by definition is not evidence. (Appendix E., pages 2 and 5) Plaintiff/petitioner's evidence was undisputed. His *res ipsa loquitur* presumptions presented were not contested by any contrary evidence showing the non-existence of the presumptive evidence. (See California Evidence Code, §604.) The only issues on appeal were questions of law. The trial court and the appellate court on review also, denied petitioner equal protection of the law in error, refusing to consider the shifted legal burdens.

A. The burden of showing negligence was shifted.

The exhibits admitted at trial, part of the appellate record, were undisputed and dispositive, and even more

persuasive and certain as to the true facts than a recording of oral testimony in a reporter's transcript.

These admitted exhibits included photographs of the scene of the accident showing posted speed limits of 30 miles per hour. A further exhibit was the uncontradicted and unimpeached diagramatic testimony of an accident reconstruction engineering expert, demonstrating the respondents' car was exceeding the posted speed limits, at a minimum speed of 50 miles per hour. The California Vehicle Code, §22351(b), 22352(a)(2)(A) and (3), provides that exceeding the posted speed limit is *"prima facie unlawful."*

A decision by the California Supreme Court, Harris v. Irish Truck Lines, Inc. (1974) 11 Cal.3d 373, at page 379, holds that the burden of proving negligence shifts to the defendant when the defendant is the *"prima facie wrongdoer."*

In circumstances similar to the present case, in Whinery v. Southern Pacific Company (1970) 6 Cal.App.3d 126, at page 129, it is shown that a train traveling 55 miles per hour at a roadway intersection where the speed limit was 35 miles per hour, the train was *"in fact"* the cause of the collision and the speed violation was also the *"cause in law, i.e. a proximate cause."*

In a further California Supreme Court case, Meincke v. Oakland Garage (1938) 11 Cal.2d 255, at page 256, it is held the *"violation of the ordinance becomes the proximate cause of the injury as a matter of law."*

Another California Supreme Court case, Haft v. Lone Palm Hotel (1970) 3 Cal.3d 756, 775, the court held a defendant *"cannot take refuge in the position that the burden of proof rests with the probable victim of his statutory violation."*

The defendants/respondents' statutory speed violation in this case shifted the burden of proof to defendants to show

they were not negligently responsible for petitioner's injury, which they failed to do.

B. A presumption of prejudice shifts the burden of providing an adequate appellate record.

In the Clerk's Transcript, it was shown by affidavits, under oath submitted to the trial and appellate court by petitioner, that a husband and wife, out of work, witnesses to the accident called by petitioner to testify on his behalf, altered their testimony at trial from favoring petitioner to favoring respondents, when defendants' counsel improperly offered the witnesses employment assistance. Neither defendants' counsel nor the witnesses denied this substantive averment by petitioner. Such a presumption of prejudice shifts the burden to respondent in a California appeal to provide an adequate record showing the trial court's rulings are right, rather than appellant's burden to provide an appellate record to show that the trial court's rulings are wrong.

The California Supreme Court case, Hasson v. Ford Motor Co. (1982) 32Cal.3d 388, at page 416, stated:

> "The presumption of prejudice is an evidentiary aid to those parties who are able to establish serious misconduct of a type likely to have had an effect on the verdict or which deprived the complaining party of thorough consideration of [his/her] case yet who are unable to establish by a preponderance of the evidence that actual prejudice occurred."

In the case cited *supra*, Lankster v. Alpha Beta Co., 15 Cal.App.4th 678 at page 683, that same second appellate court that refused to review this case, held, if there:

> "... was established by the appellant ...a presumption of prejudice, the burden shifts to the respondent to overcome the presumption by presenting a record sufficient to sustain the trial court's decision ...(Citations) ... the issue on appeal is whether the trial court's order finds support in the record.."

Any deficiency in the appellate record was the respondents' failure, not the petitioner's.

Here, the trial court, the same appellate court and the California Supreme Court refused to recognize the shift of the burdens of proof to respondents on issues raised at trial, further showing prejudice and denial of due process, equal protection of the laws and of federal civil rights.

III. CONCLUSION

In this case the trial judge was a lawyer; the appellate justices lawyers; the California Supreme Court justices, all lawyers; justices of this court and gatekeeper clerks for the justices all lawyers. The petitioner is a non-lawyer, *pro se, in propria persona;* he didn't go to law school, suffer through the bar examination and the political experience necessary to be appointed to the bench.

Rhetorically, first, can *pro se, in propria persona* petitioners challenge such a coterie of lawyers and judges to successfully petition for a writ of certiorari to the United States Supreme Court; and second, can the lawyers and judges, in good faith, recognize their discrimination against such a *pro se, in propria persona* litigant, in relegating him to a second class of citizenship by denying due process and equal protection of the laws for the mere reason that a fellow lawyer was not employed by the layman to pursue his case?

The answer to both questions is probably not, but perhaps, only, as in this case, where there is irrefutable proof that the courts of California denied the petitioner due process and equal protection of the its laws, its Constitution, the United States' Constitution and in denial of federal civil rights. The California Supreme Court's review of their provincial colleagues was discretionary, as it is with this court, but where else can such injustice be confronted?

Petitioner prays that this court grant petitioner due process and equal protection of the laws by issuing a writ of certiorari for review of the judgement below. A fair review of this petition should include the full appellate record, including the exhibits admitted at trial, lodged as part of the appellate record, but prematurely and prejudicially forced to be retrieved by petitioner from the appellate record, unexamined by the California Second District Court of Appeal or have them subject to "disposal." (Appendix F.)

At minimum, the petition could be granted, the judgement vacated and the case remanded to a trial court in a California county other than Los Angeles and other than the jurisdiction of the California Second District Court of Appeal, to consider contributory negligence of respondents' *prima facie* violation of the California statutory motor vehicle code.

Respectfully submitted,

DATED: JUNE 20, 2001

Thomas M. Eells
Petitioner, *In pro se*

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TELEPHONE (562) 988-1049

FILED
LOS ANGELES SUPERIOR COURT

FEB 24, 2000
JOHN A. CLARKE, CLERK
BY D. ARELLANO, DEPUTY

WAYNE HUNKINS, ESQ. Bar No. 38595
Attorneys for: Defendants, WILLIAM KWOK,
BRIAN KWOK, RAYOND KWOK.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THOMAS M. EELLS	No. BC195306
Plaintiff,	JUDGEMENT ON TRIAL VERDICT
vs.	JUDGE PAUL G. FLYNN
	DEPARTMENT WE-G
WILLIAM KWOK, BRIAN KWOK, RAYMOND KWOK,	Trial Date: 12-28-99
	Verdict date: 1-2-00
Defendants	

This cause came on regularly for trial on December 28, 1999, in Department WE-G of the Los Angeles County Superior Court, the Honorable Paul G. Flynn presiding. Plaintiff appeared in propria persona, defendants Brian Kwok, William Kwok and Raymond Kwok appeared by their attorneys Bollington and Roberts by Wayne Hunkins.

On the second day of trial, on motion of the defendants, the complaint against Raymond Kwok was dismissed by the court.

A jury of twelve (12) persons was regularly impaneled and sworn to try the action. Witnesses on the part of both plaintiff and defendants were sworn and examined. After having heard the evidence and the arguments of counsel, the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned into court with the verdict consisting of the special issues submitted to the jury and the answers given hereto by the jury which said verdict was in words and figures as follows, to wit:

(TITLE OF COURT AND CAUSE)

We the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

QUESTION NO. 1: Was the defendant negligent?

Answer "yes" or "no" after the name of the defendant.

	YES	NO
ANSWER: Defendant: Brian Kwok	1	11

If the answer Question No. 1 "no" as to the defendant, sign and return this verdict.

If you answer Question No. 1 "yes" as to the defendant, then answer Question No. 2.

Dated: 1/3/00 /s/ Shana Meyerson

It appearing that by reason of said special verdict:

Defendant, Brian Kwok, is entitled to judgement against plaintiff, Thomas M. Eells. The case of William Kwok as registered owner was submitted to the court for ruling compatible with the jury verdict on Brian Kwok. The court hereby dismisses the case against William Kwok since no liability was found on the driver of the vehicle, Brian Kwok.

NOW THEREFORE, IT IS ORDERED ADJUDGED AND DECREED:

That defendants, Brian Kwok and William Kwok, have judgement against the plaintiff, Thomas M. Eells.

This court finds that the defendants having received a verdict after trial by jury, costs and disbursements are awarded to defendants, Brian Kwok and William Kwok in the aggregate sum of $5,413.45

DATED: 2/24/2000 /S/ Paul G. Flynn

JUDGE OF THE SUPERIOR COURT.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT DIVISION FIVE

THOMAS EELLS	) B139862
	)
Plaintiff and appellant,	)
	) Super. Ct.No.
v.	) No. BC195306
	)
WILLIAM KWOK, et al	)
	) COURT OF APPEAL-
	) SECOND DIST.
Defendants and	) FILED
Respondents.	) MAR 02, 2001
	) JOSEPH C. LANE
	) County Clerk
	)

APPEAL from a judgement of the Superior Court of Los Angeles County, Paul G. Flynn, Judge. Affirmed.

Thomas M. Eells, in pro, per., for Plaintiff and Appellant

Horvitz & Levy, Sandra J. Smith, Holly R. Paul, Bollington & Roberts, and Wayne Hunkins for Defendants and Respondents.

Plaintiff, Thomas M. Eels, in propria persona, appeals from a judgement entered against him in a personal injury and property damage action brought against several defendants as a result of an automobile accident. He raises various issues concerning the trial and post-trial motions. He has not provided us with a reporter's transcript of any of these proceedings. We affirm.

Plaintiff has not provided this court with a reporter's transcript of the trial or any other proceedings. Plaintiff has an affirmative obligation to provide an adequate record so that we may assess whether the trial court erred in excluding the subject testimony. (*Maria P. v. Riles (1987)* 43 Cal.3d 1281, 1295-1296; *In re Kathy P.* (1979) 25 Cal.3d 91, 102; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.) An appellant court never presumes the trial court has erred. The Court of Appeal has held: "A judgement or order of the lower court is *presumed correct.* All intendments and presumptions are indulged to support it on matters as to which the record is silent ...' [Citation.]" (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712, italics original.) In the absence of a complete record in the case, we will not presume error in any respects. (*Maria P. v. Riles, supra,* 43 Cal.3d pp.1295, 1296; *In re Kathy P., supra* 25 Cal.3d at p. 102; *Interinsurance Exchange v. Collins, supra* 30 Cal.App.4th at p. 1448; *Rossiter v. Benoit, supra,* 88 Cal.App. 3d at p. 712.

The judgement is affirmed. Defendants, William Kwok, Brian Kwok and Raymond Kwok, shall recover their costs on appeal from plaintiff, Thomas M. Eells.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

GRIGNON, J.

GODOY PEREZ, J.

APPENDIX C

Court of Appeal, Second Appellate District, Division Five - No. B139862
S096351

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED

MAY 16 2001

Frederick K. Ohlrich Clerk

DEPUTY

THOMAS M. EELS, Appellant,

v.

WILLIAM KWOK et al., Defendants and Respondents.

Petition for review DENIED.

GEORGE

Chief Justice

APPENDIX D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK
DIVISION 5

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

THOMAS M. EELLS
v.
WILLIAM KWOK, et al.
B139862
Los Angeles County No. BC195306

REMITTITUR

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on March 2, 2001 and that this order, opinion or decision has not become final.

Defendants, William Kwok, Brian Kwok and Raymond Kwok, shall recover their costs on appeal from plaintiff, Thomas Eells.

Witness my hand and seal of the Court
affixed at my office this JUN 15, 2001

Joseph A. Lane, Clark

By: _____
Deputy Clerk

cc: All Counsel
File

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO
	JUDGE PRO TEM	
M. SUMI	Deputy Sheriff	C. TACHELL CSR# 8572

BC195306	Plaintiff Counsel	THOMAS M. EELLS In Pro Per
THOMAS M. EELLS [X] VS WILLIAM KWOK [X]	Defendant Counsel	WAYNE HUNKINS [X]

NATURE OF PROCEEDINGS:

JURY TRIAL; PI-PD

Cause transferred from Department WE-A is called for trial.

Sign Language Interpreters John G. Izaguirre and Jennifer Snipstad, are sworn as sign language interpreters.

Motions in limine are argued and denied in part as more fully reflected in the notes of the official court reporter incorporated herein by reference.

A panel of 35 jurors is admonished re qualifications and voir dire begins.

Pursuant to stipulation of counsel and on order of the Court, the following jurors are sworn to try the cause:

1. Barry Scheinberg
2. Craig Gladous
3. George Mori
4. Jimmy Duarte
5. Laura Mecoy
6. Julie Noble
7. Ted Lekas
8. Shana Meyerson
9. Adrea Suddith
10. Robert Hickel
11. Kenneth Ploesser
12. Marie Gregor

Pursuant to stipulation of counsel and on order of the Court, Clea Jones, is sworn to try the cause

MINUTES ENTERED
12/28/99
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO	
	JUDGE PRO TEM		
M. SUMI	Deputy Sheriff	C. TACHELL CSR# 8572	

BC195306	Plaintiff	THOMAS M. EELLS
	Counsel	In Pro Per
THOMAS M. EELLS [X]		
VS	Defendant	WAYNE HUNKINS [X]
WILLIAM KWOK [X]	Counsel	

NATURE OF PROCEEDINGS:

as an alternate juror.

Counsel present opening statements to the jury.

William Kwok, Raymond Kwok and Brian Kwok, are sworn and examined pursuant to Evidence Code section 776.

Thomas Eells is sworn and testifies on his own behalf.

Defendant's exhibit 101, 102 and 103 (each a photograph) are marked for identification only.

Plaintiff's exhibit 1 (Repair Estimate), 2 (Photograph), 3 (Photograph), 4 (Diagram), 5 (Diagram), 6 (Interrogatories) 7 (Interrogatories) 8 (Photograph), 9 (Photograph), 10 (Photograph), 11 (Diagram) and 12 (Kelley Blue Book-August 1997) are marked for identification.

Exhibits 2, 3, 5, 8, 9, 10, and 11 are admitted into evidence.

The jury is admonished and trial is continued to December 29, 1999 at 9:00 a.m. in Department WE-G.

MINUTES ENTERED
12/28/99
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO	
	JUDGE PRO TEM		
M. SUMI	Deputy Sheriff	C. TACHELL CSR# 8572	

BC195306	Plaintiff Counsel	THOMAS M. BELLS In Pro Per
THOMAS M. BELLS VS WILLIAM KWOK ET. AL.	Defendant Counsel	WAYNE HUNKINS [X]

NATURE OF PROCEEDINGS:

JURY TRIAL;

Trial continued from December 28, 1999 resumes with counsel, jurors and parties present as heretofore.

IN THE PRESENCE OF THE JURY:

Linda Humphreys is sworn as Sign Language Interpreter. John G. Izaguirre, previously sworn, resumes as Sign Language Interpreter.

Julie Bells, Noelle Wright, Leslie E. Wright III, and David Moses, are sworn and testify for the plaintiff.

OUT OF THE PRESENCE OF THE JURY: Daniel Robinson is sworn and examined pursuant to Evidence Code section 402 and, the Court having heard the evidence presented precludes said witness from offering his expert opinion.

IN THE PRESENCE OF THE JURY:

Thomas M. Bells, previously sworn, resumes testifying on his own behalf.

Plaintiff's exhibits 13 (Daily Blood Pressure Reading) 14 (Monograph), 15 (Photograph), 16 (Blow-Up Diagram), 17 (Blow-Up Letter), 18 (Bills-collectively),

MINUTES ENTERED
12/29/99
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO
	JUDGE PRO TEM	
M. SUMI	Deputy Sheriff	C. TACHELL CSR# 8572

BC195306	Plaintiff	THOMAS M. EELLS
	Counsel	In Pro Per
THOMAS M. EELLS		
VS	Defendant	WAYNE HUNKINS [X]
WILLIAM KWOK ET. AL.	Counsel	

NATURE OF PROCEEDINGS:

19 (11/5 Bill), 20 (3-Pedco monographs), and 21 (Federal Communication Commission Receipt) are marked for identification. Exhibit 13 is admitted into evidence.

Defendant's exhibit 113 (document) is marked and admitted into evidence.

Plaintiff rests.

OUT OF THE PRESENCE OF THE JURY:

Defendant's motion for non-suit pursuant to section 581(c) of the Code of Civil Procedure and/or motion strike is argued. Having heard the evidence presented and the arguments of counsel, the Court finds that there is insufficient evidence to support plaintiff's claim of negligence and causation.

Motion for non-suit as to defendant Raymond Kwok is granted pursuant to Evidence Code section 581(c).

Motion for non-suit is denied as to property damage.

IN THE PRESENCE OF THE JURY:

The jury is admonished and trial is continued to January 3, 2000 at 10:30 a.m. in Department WE-G.

MINUTES ENTERED
12/29/99
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO	
	JUDGE PRO TEM		
M. SUMI	Deputy Sheriff	C. ALANIZ	CSR# 9432

BC195306	Plaintiff Counsel	THOMAS M. EELLS In Pro Per
THOMAS M. EELLS [X] VS WILLIAM KWOK [X]	Defendant Counsel	WAYNE HUNKINS [X]

NATURE OF PROCEEDINGS:

JURY TRIAL;

Trial continued from December 29, 1999, resumes with counsel, parties and jurors present as heretofore.

IN THE PRESENCE OF THE JURY:

Counsel stipulate that exhibits 101, 102, 103, 104, 105, 4, 15, and 16 be admitted into evidence and the Court so orders.

Both sides rest. The Court pre-instructs the jury; counsel argue; The Court concludes with final instructions and the bailiff is sworn to take charge of the jury.

At 2:16 p.m., the jury begins deliberating.
At 2:50 p.m., the jury indicates that a verdict has been reached and at 3:05 p.m., the jury returns with the following special verdict.

(TITLE OF COURT AND CAUSE)

We, the jury in the above-entitled action, find the following special verdict on the questions submitted to us:

QUESTION NO.1: Was the defendant negligent?

MINUTES ENTERED
01/03/00
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO	
	JUDGE PRO TEM		
M. SUMI	Deputy Sheriff	C. ALANIZ	CSR# 9432

BC195306	Plaintiff Counsel	THOMAS M. BELLS In Pro Per
THOMAS M. BELLS [X] VS WILLIAM KWOK [X]	Defendant Counsel	WAYNE HUNKINS [X]

NATURE OF PROCEEDINGS:

Answer "yes" or "no" after the name of the defendant.

	YES	NO
ANSWER: Defendant, Brian Kwok	1	11

If you answer Question No.1 "no" as to the defendant, sign and return this verdict.

If you answer Question No.1 "yes" as to the defendant, then answer Question No. 2.

Dated: 1/3/00 /s/ Shana Meyerson

On the Court's own motion, the jury is polled and all jurors answer in the affirmative except juror number 11, Kenneth Ploesser.

The jury is thanked and discharged. All exhibits are ordered returned to counsel to be retained and maintained pending final determination of the action including expiration of time to appeal.

The verdict form and jury instructions are filed this date.

Matter is set for an ORDER TO SHOW CAUSE on JANUARY 14, 2000 at 8:30 a.m. in Department WE-G, why plaintiff Thomas Bells and counsel for the Defendant, Wayne Hunkings, should not be sanctioned for failure to pay court reporter fees and jury fees.

MINUTES ENTERED
01/03/00
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

PAUL G. FLYNN	JUDGE	D. ARELLANO	
	JUDGE PRO TEM		
M. SUMI	Deputy Sheriff	C. ALANIZ	CSR# 9432

BC195306	Plaintiff Counsel	THOMAS M. EELLS In Pro Per
THOMAS M. EELLS [X] VS WILLIAM KWOK [X]	Defendant Counsel	WAYNE HUNKINS [X]

NATURE OF PROCEEDINGS:

Counsel for prevailing party to prepare and submit proposed form of judgment.

A copy of this minute order is forwarded to parties addressed as follows:

THOMAS M. EELLS, PRO PER
10750 CUSHDON AVE
LOS ANGELES, CA 90064

WAYNE HUNKINS, ESQ.
BOLLINGTON AND ROBERTS
3780 KILROY AIRPORT WAY SUITE 540
LONG BEACH, CA 90806

MINUTES ENTERED
01/03/00
COUNTY CLERK

APPENDIX F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 5

DATE: June 6, 2001

Thomas Eells
10750 Cushdon Avenue
Los Angeles, CA 90064

THOMAS M. EELLS
v.
WILLIAM KWOK, et al.

B139862
Los Angeles County No. BC195306

NOTICE

Appellant pro per Thomas Eells is notified that if the exhibits lodged in the above-entitled matter (1 brown envelope) are not retrieved within 15 days, an order authorizing their disposal will be issued.

If a messenger service is sent to retrieve the exhibits, a letter from appellant authorizing their return should be submitted to this office